

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BARBARA C. HUETHER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 12-CV-0552-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 14 and 16). Plaintiff is represented by Rebecca M. Coufal. Defendant is represented by Daphne Banay. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
7 limited: the Commissioner's decision will be disturbed "only if it is not supported
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
10 relevant evidence that "a reasonable mind might accept as adequate to support a
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
12 substantial evidence equates to "more than a mere scintilla[,] but less than a
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this
14 standard has been satisfied, a reviewing court must consider the entire record as a
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. If the evidence in the record "is
18 susceptible to more than one rational interpretation, [the court] must uphold the
19 ALJ's findings if they are supported by inferences reasonably drawn from the
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
 2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
 3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
 4 The party appealing the ALJ’s decision generally bears the burden of establishing
 5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
 8 the meaning of the Social Security Act. First, the claimant must be “unable to
 9 engage in any substantial gainful activity by reason of any medically determinable
 10 physical or mental impairment which can be expected to result in death or which
 11 has lasted or can be expected to last for a continuous period of not less than twelve
 12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
 13 “of such severity that he is not only unable to do his previous work[,] but cannot,
 14 considering his age, education, and work experience, engage in any other kind of
 15 substantial gainful work which exists in the national economy.” 42 U.S.C. §
 16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
 18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
 19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
 20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
16 severe than one of the enumerated impairments, the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
19 work, the analysis concludes with a finding that the claimant is disabled and is
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
3 the analysis proceeds to step five, the burden shifts to the Commissioner to
4 establish that (1) the claimant is capable of performing other work; and (2) such
5 work “exists in significant numbers in the national economy.” 20 C.F.R. §§
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 ALJ’S FINDINGS

8 Plaintiff filed applications for disability insurance benefits and supplemental
9 security income disability benefits on February 19, 2010. Tr. 159-167, 168-171.
10 These applications were denied initially and upon reconsideration and a hearing
11 was requested. Tr. 100-103, 106-07, 108-110, 111-112. A hearing was held
12 before an Administrative Law Judge (“ALJ”) on May 18, 2011. Tr. 34-85. The
13 ALJ issued a decision denying Plaintiff benefits on June 17, 2011. Tr. 8-23.

14 At step one, the ALJ found that Plaintiff had not engaged in substantial
15 gainful activity since February 15, 2010, the alleged onset date. Tr. 13. At step
16 two, the ALJ found that Plaintiff had severe impairments, but, at step three, the
17 ALJ found that Plaintiff’s impairments did not meet or medically equal a listed
18 impairment. Tr. 13–16. The ALJ determined Plaintiff had the residual functional
19 capacity (RFC) to:

20 perform sedentary work as defined in 20 C.F.R. 404.1567(a) and
416.967(a). The claimant can stand and walk up to four hours per day

1 and she can sit up to six hours per day. She would need to change
2 position at least once per hour. She could not climb ladders, ropes, or
3 scaffolding and she could occasionally climb stairs and ramps. She
4 could not balance. She could occasionally crouch, crawl, kneel, and
stoop. She could not be exposed to unprotected heights or heavy
equipment. She could not be exposed to extreme cold, heat, or harsh
industrial chemicals.

5 Tr. 16. At step four, the ALJ found that Plaintiff was able to perform her past
6 relevant work as a receptionist and cashier. Tr. 21-22. At step five, the ALJ made
7 alternative findings that there were a significant number of jobs existing in the
8 national economy which Plaintiff could perform in view of her residual functional
9 capacity and denied her claims on that basis, as well. Tr. 22-23.

10 The Appeals Council denied Plaintiff's request for review on September 18,
11 2012, making the ALJ's decision the Commissioner's final decision for purposes
12 of judicial review. Tr. 1-6; 20 C.F.R. §§ 404.981, 416.1484, and 422.210.

13 ISSUES

14 Plaintiff raises four issues for review:

- 15 1. Whether the ALJ erred by failing find Plaintiff's depressive disorder and
16 personality disorder severe at step two;
- 17 2. Whether the ALJ improperly rejected the consulting/examining
18 psychologists' opinions;
- 19 3. Whether the ALJ erred in assessing Plaintiff's credibility; and
20

1 4. Whether the ALJ properly constructed the hypothetical posed to the
2 vocational expert.

3 ECF 14 at 8-9, 12-13, 16, 18.

4 DISCUSSION

5 **A. The ALJ's Step Two Severity Findings**

6 Plaintiff bears the burden to establish the existence of a severe impairment
7 or combination of impairments, which prevent her from performing substantial
8 gainful activity, and that the impairment or combination of impairments lasted for
9 at least twelve continuous months. 20 C.F.R. §§ 404.1505, 404.1512; 416.905,
10 416.912; *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001). An
11 impairment, to be considered severe, must significantly limit an individual's ability
12 to perform basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c); *Smolen v.*
13 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). An impairment(s) that is "not severe"
14 must be a slight abnormality (or a combination of slight abnormalities) that has no
15 more than a minimal effect on the ability to do basic work activities. SSR 96-3P,
16 1996 WL 374181. Basic work activities include "abilities and aptitudes necessary
17 to do most jobs, including, for example, walking, standing, sitting, lifting, pushing,
18 pulling, reaching, carrying or handling." 20 C.F.R. § 404.1521(b).

19 A physical or mental impairment is one that "results from anatomical,
20 physiological, or psychological abnormalities which are demonstrable by

1 medically acceptable clinical and laboratory diagnostic techniques.” 42 U.S.C. §§
2 423(d)(3), 1382c(a)(3)(D). An impairment must be established by medical
3 evidence consisting of signs, symptoms, and laboratory findings, and “under no
4 circumstances may the existence of an impairment be established on the basis of
5 symptoms alone.” *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005)(citing
6 SSR 96-4p, 1996 WL 374187 (July 2, 1996))(defining “symptoms” as an
7 “individuals own perception or description of the impact of” the impairment).

8 Plaintiff asserts that the ALJ erred in failing to list Plaintiff’s depressive
9 disorder and personality disorder as severe impairments at step two. ECF No. 14
10 at 8-12.

11 Plaintiff seems to misapprehend that a step two finding of a severe
12 impairment does not itself result in a finding of disability. Step two merely screens
13 out groundless claims. *See Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996)
14 (citing *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987)). Having passed through
15 the step 2 window, Plaintiff cannot show she was harmed by the Commissioner’s
16 step two finding. While styled as a step two challenge, this argument is better
17 addressed to the ALJ’s RFC findings as applied at steps four and five. Only then
18 could Plaintiff show the necessary harmful error. *See Lewis v. Astrue*, 498 F.3d
19 909, 911 (9th Cir. 2007) (holding that ALJ’s failure to list plaintiff’s bursitis as a
20

1 severe impairment at step two was harmless where ALJ considered limitations
2 caused by the condition at step four).

3 Thus, the Court will proceed to address Plaintiff's argument that the ALJ
4 improperly discounted the consulting and examining psychologists' opinions,
5 thereby affecting the ALJ's RFC assessment.

6 **B. The Consulting/Examining Psychologists' Opinions**

7 Plaintiff contends that the ALJ erred by failing to incorporate her limitations
8 from a depressive disorder found by three consultative psychologists.¹ Specifically,
9 Plaintiff contends the vocational expert conceded that Plaintiff would be precluded
10 in her ability to keep a job for any period of time assuming the limitations assessed
11 by examining psychologist Mahlon B. Dalley, Ph.D., in his April 9, 2010
12 evaluation. Tr. 82-83, 560.

13
14
15 ¹ Plaintiff also now complains that the ALJ should have obtained records from
16 Community Health Services of Spokane (CHAS). ECF No. 14 at 10-11. Plaintiff
17 did not identify any additional records for the ALJ (Tr. 38) and the 2005 CHAS
18 records would significantly predate Plaintiff's alleged onset date (see Tr. 51-52).
19 Thus, the Court finds no reversible error with respect to this assertion which was
20 relegated to a footnote in Plaintiff's brief.

1 A treating physician's opinions are entitled to substantial weight in social
2 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
3 (9th Cir. 2009). If a treating or examining physician's opinion is uncontradicted,
4 an ALJ may reject it only by offering “clear and convincing reasons that are
5 supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th
6 Cir. 2005). “However, the ALJ need not accept the opinion of any physician,
7 including a treating physician, if that opinion is brief, conclusory and inadequately
8 supported by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation
9 omitted); *see also Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995) (upholding
10 ALJ's decision to reject examining psychologist's functional assessment that
11 conflicted with his own written report and test results). “If a treating or examining
12 doctor's opinion is contradicted by another doctor's opinion, an ALJ may only
13 reject it by providing specific and legitimate reasons that are supported by
14 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d at 1216 (citing *Lester v.*
15 *Chater*, 81 F.3d 821, 830–831 (9th Cir. 1995)).

16 However, “[t]he opinion of a nonexamining physician cannot by itself
17 constitute substantial evidence that justifies the rejection of the opinion of either an
18 examining physician or a treating physician. *Lester*, 81 F.3d at 831 (other
19 contradictory evidence includes laboratory reports, medical reports, and claimant’s
20 testimony). To the extent that an examining physician’s opinions are based upon

1 the claimant's subjective complaints, the ALJ may cite the unreliable nature of the
2 claimant's complaints as a reason for rejecting the examining physician's opinion.
3 *See Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) ("A
4 physician's opinion of disability [which is] premised to a large extent upon the
5 claimant's own accounts of his symptoms and limitations may be disregarded
6 where those complaints have been properly discounted.") (internal quotations and
7 citation omitted).

8 Contrary to Plaintiff's assertions, the ALJ offered clear and convincing
9 reasons for rejecting these witnesses' conclusions. First, the ALJ rejected the
10 conclusions of Samantha Chandler, Psy.D., from her consultative examination of
11 April 12, 2010. The ALJ found:

12 This opinion is not consistent with the evidence of record. First, since
13 the evaluation with Dr. Genthe [in 2007], there is no evidence of
14 record to suggest a change in the claimant's level of function, i.e., the
15 claimant has not sought mental health counseling and the medical
16 treatment notes do not mention a significant change in the claimant's
17 level of depressive symptoms. Dr. Chandler said there is evidence of
18 problems in social functioning; yet, she did not elaborate on these
19 problems and the claimant did not complain to Dr. Chandler of any
20 difficulties in this area. Dr. Chandler said the claimant was timid;
however, during the hearing with the undersigned the claimant
showed no signs of being timid. Moreover, the evidence of record also
shows she has had no problems with interactions with treatment
providers or examiners. Dr. Chandler stated the claimant could follow
short, simple instructions, but said nothing about complex
instructions. The evidence as a whole suggests the claimant is capable
of both simple and complex tasks. She completed four years of
college and she was an active member of Mensa.

* * *

However, again, there is no evidence of record to suggest the claimant has significant limitations with interaction with the general public. The claimant reported to Dr. Chandler that she is able to go out alone and she can grocery shop. . . . The evidence of record also shows she has had no problems with interactions with treatment providers or examiners.

Tr. 19 (bracketed information added). Moreover, the ALJ fully explained the reasoning for including a longitudinal reference to a June 2007 evaluation:

Although this opinion was given several years prior to the alleged onset date, the evidence of record shows a trend of steady symptoms, both physically and mentally. Therefore, the undersigned finds this evaluation provides a good understanding of the claimant's level of functioning for the past several years. Moreover, this assessment is consistent with the ability to complete a college degree, take care of infant and toddler nephews, and be a member of Mensa.

Tr. 18. Substantial evidence in the record supports the ALJ's findings.

Next, the ALJ gave little weight to the conclusions of Mahlon Dalley, Ph.D. from two examinations he performed on April 9, 2010 and December 14, 2010. With regard to Dr. Dalley's conclusion that Plaintiff had moderate to marked social limitations, the ALJ found:

However, again, the claimant has not complained of problems with social interaction; she has been cooperative with treating and examining medical providers; she is able to interact with clerks for the purposes of commerce; and she was cooperative during the hearing. The evidence of record is not supportive of more than mild limitations in social functioning.

1 Tr. 19-20. Substantial evidence in the record supports the ALJ's findings and these
2 findings are clear and convincing.

3 Next, the Plaintiff cites to a third evaluation of Dr. Dalley's issued June 17,
4 2011. This opinion was not submitted to the ALJ but rather submitted only to the
5 Appeals Council by Plaintiff in August 2011, since the ALJ's opinion was issued
6 the same day as the Doctor's report. Tr. 640-647. The Ninth Circuit has
7 recognized that the "regulations permit claimants to submit new and material
8 evidence to the Appeals Council and require the Council to consider that evidence
9 in determining whether to review the ALJ's decision, so long as the evidence
10 relates to the period on or before the ALJ's decision." *Brewes v. Commissioner of*
11 *Social Sec.*, 682 F.3d 1157, 1162 (9th Cir. 2012)(citing 20 C.F.R. § 404.970(b)).

12 The date of the ALJ's decision is critical here because the ALJ found
13 claimant not disabled from February 15, 2010 through June 17, 2011. Disabled is
14 defined as the inability to engage in any substantial gainful activity by reason of
15 any medically determinable physical or mental impairment or combination of
16 impairments that can be expected to result in death or that has lasted or can be
17 expected to last for a continuous period of not less than 12 months.

18 Dr. Dalley's two prior reports opined that claimant's condition would only
19 last six months at most, Tr. 564, or nine to twelve months, Tr. 588. Even if these
20 prior opinions were accepted, neither would have fully met the continuous

1 disability period. Only the new report estimated that Plaintiff would be impaired
2 for more than 12 months. Tr. 647.

3 This Court must review the record as a whole and determine whether
4 substantial evidence supports the ALJ's decision. Having reviewed the record and
5 Dr. Dalley's newest report, the Court cannot find the reasons for rejecting Dr.
6 Dalley's opinions were erroneous. What was true with Dr. Dalley's first two
7 opinions remains true as to his final report, as well.

8 **C. Plaintiff's Credibility**

9 Plaintiff contends that the ALJ improperly discredited Plaintiff's subjective
10 complaints according to *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir.
11 2007).

12 In social security proceedings, a claimant must prove the existence of
13 physical or mental impairment with “medical evidence consisting of signs,
14 symptoms, and laboratory findings.” 20 C.F.R. § 404.1508. A claimant's
15 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§
16 404.1508; 404.1527. Once an impairment has been proven to exist, the claimant
17 need not offer further medical evidence to substantiate the alleged severity of his or
18 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).
19 As long as the impairment “could reasonably be expected to produce [the]
20 symptoms,” 20 C.F.R. § 404.1529(b), the claimant may offer a subjective

1 evaluation as to the severity of the impairment. *Id.* This rule recognizes that the
2 severity of a claimant's symptoms "cannot be objectively verified or measured."
3 *Id.* at 347 (quotation and citation omitted).

4 Evaluating the credibility of a claimant's testimony regarding subjective pain
5 requires the ALJ to engage in a two-step analysis. *Lingenfelter v. Astrue*, 504 F.3d
6 1028, 1035–36 (9th Cir. 2007). "First, the ALJ must determine whether the
7 claimant has presented objective medical evidence of an underlying impairment
8 which could reasonably be expected to produce the pain or other symptoms
9 alleged." *Id.* at 1036 (internal citations and quotation marks omitted). The claimant
10 is not required to show that her impairment "could reasonably be expected to cause
11 the severity of the symptom she has alleged; she need only show that it could
12 reasonably have caused some degree of the symptom." *Id.* (quoting *Smolen v.*
13 *Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996)). Nor may the ALJ discredit the
14 subjective testimony as to the severity of the symptoms "merely because they are
15 unsupported by objective medical evidence." *Reddick v. Chater*, 157 F.3d 715, 722
16 (9th Cir. 1998). If the claimant satisfies the first step and there is no evidence of
17 malingering, the ALJ may only reject the claimant's testimony about the severity of
18 the symptoms by providing "specific, clear and convincing reasons" for the
19 rejection. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). On the other hand,

1 “the medical evidence is still a relevant factor in determining the severity” of the
2 claimant's limitations. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001).

3 In the event that an ALJ finds the claimant’s subjective assessment
4 unreliable, however, “the ALJ must make a credibility determination with findings
5 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
6 arbitrarily discredit claimant's testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958
7 (9th Cir. 2002). In making such a determination, the ALJ may consider, *inter alia*:
8 (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the claimant’s
9 testimony or between his testimony and his conduct; (3) the claimant’s daily living
10 activities; (4) the claimant’s work record; and (5) testimony from physicians or
11 third parties concerning the nature, severity, and effect of the claimant's condition.
12 *Id.* The ALJ may also consider a claimant’s “unexplained or inadequately
13 explained failure to seek treatment or to follow a prescribed course of treatment.”
14 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If there is no evidence
15 of malingering, the ALJ’s reasons for discrediting the claimant’s testimony must
16 be “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th
17 Cir. 2012) (quotation and citation omitted). The ALJ “must specifically identify
18 the testimony she or he finds not to be credible and must explain what evidence
19 undermines the testimony.” *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
20 2001).

1 Here, the ALJ provided the following specific, clear and convincing reasons,
2 supported by substantial evidence in the record, for discounting Plaintiff's
3 complaints of total disability:

4 After careful consideration of the evidence, the undersigned finds
5 that the claimant's medically determinable impairments could
6 reasonably be expected to cause the alleged symptoms; however,
7 the claimant's statements concerning the intensity, persistence and
8 limiting effects of these symptoms are not credible to the extent
9 they are inconsistent with the above residual functional capacity
10 assessment.

11 * * *

12 Prior to the alleged onset date, the claimant's physical impairments
13 did not prevent her from earning a four year college degree or
14 babysitting her two young nephews. These activities show the
15 claimant was capable of a full range of activities of daily living
16 prior to the alleged onset date and the evidence of record does not
17 indicate any worsening of the claimant's impairments. Therefore,
18 the undersigned finds the claimant would likely be able to maintain
19 the same level of functioning currently. The claimant alleged she
20 did not do much lifting of her nephews. However, this is not a
reasonable assertion. She said she watched her nephews for about
eight hours per day. It is very likely she had to lift her 10 month
old nephew at least occasionally throughout the day. Although the
undersigned finds the claimant can lift no more than 10 pounds
occasionally, it is assumed the claimant's 10 month old nephew
weighed more than 10 pounds.

There are minimal treatment records after the alleged onset date,
suggesting the claimant's impairments are not as significant as she
has alleged in connection with her application for benefits.

* * *

However, the claimant does not exercise regularly and she did not
attend physical therapy as recommended. Treatment notes from
November 2010 and January 2011, indicate the claimant was

1 discharged from Rockwood physical therapy after just two sessions
2 because the claimant said she could no longer attend since she had
3 too many things going on. Importantly, it was also noted the
4 claimant had improvement after those two sessions. Furthermore,
per the claimant's testimony and treatment notes, the claimant feels
better when she does exercise. On November 8, 2010, she reported
she did her exercises that morning and she felt really good.

5 The claimant wore wrist braces to the hearing, but the current
6 evidence of record does not suggest any impairment to the
7 claimant's wrists. The claimant admitted she is able to use the
computer for up to four hours per day, indicating good use of the
8 claimant's hands. A consultative examination and physical
capacities examination were both normal.

9 * * *

10 Finally, the claimant admitted at the hearing that she is looking to
11 volunteer at the local library; however, based on her testimony, it
12 is clear that she would be looking for regular employment at the
library if it were not for budget issues preventing the libraries from
13 hiring. This suggests that the claimant believes herself capable of
working, but is unwilling to look for work outside the area that she
earned her degree in.

14 Tr. 17-18, 20. These are but a few of the ALJ's findings that Plaintiff has ignored
15 in challenging the ALJ's decision. No error has been shown.

16 **D. The Hypothetical Posed to the Vocational Expert**

17 Plaintiff argues that, "[t]he ALJ, in not considering [Plaintiff's] mental
18 health problems severe, and not providing the ALJ with a hypothetical which
19 included the mental health limitations results in the ALJ not providing a VE with
20 all of [Plaintiff's] limitations." ECF No. 14 at 18.

1 This argument is not otherwise developed and can only be interpreted as
2 derivative of Plaintiff's arguments above. No error has been shown above, thus,
3 the hypothetical was proper.

4 **IT IS HEREBY ORDERED:**

5 1. Defendant's Motion for Summary Judgment, ECF No. 16, is

6 **GRANTED.**

7 2. Plaintiff's Motion for Summary Judgment, ECF No. 14, is **DENIED.**

8 The District Court Executive is hereby directed to file this Order, enter
9 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

10 **DATED** July 3, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge